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KAO CHE JEN v. N CHANTHIRAN NAGAPPAN

COURT OF APPEAL, PUTRAJAYA
MOHD ZAWAWI SALLEH JCA
IDRUS HARUN JCA
ABDUL RAHMAN SEBLI JCA
B [CIVIL APPEAL NO: Q-02(IM)-1828-10-2014]
6 OCTOBER 2015

COMPANY LAW: *Winding up – Liquidators – Allegations of acts of criminality by liquidator – Application for removal of court appointed liquidator – Whether prior leave of court should be obtained before application could be made – Companies Act 1965, s. 232(1)*

C

STATUTORY INTERPRETATION: *Construction of statutes – Intention of Parliament – Section 232(1) of Companies Act 1965 – Whether prior leave of court should be obtained before application for removal of court appointed liquidator*

D

STM Transformers Sdn Bhd ('the company') was compulsorily wound up and the respondent was appointed as a liquidator. The appellant *vide* an originating summons sought to remove the respondent as the liquidator pursuant to s. 232(1) of the Companies Act 1965 ('the Act') and to appoint
E the official receiver as a new liquidator. The appellant, in his affidavit in support, complained of criminality of the acts of the respondent. The respondent, however, by notice of application pursuant to O. 18 r. 19(1)(b), (c) and (d) and O. 92 r. 4 of the Rules of Court 2012, sought the court's order to strike out the appellant's originating summons grounded, *inter alia*, on the
F appellant's failure to obtain the requisite leave from the winding up court to commence proceedings against the respondent for his removal as the liquidator for the company ('the said leave'). The High Court Judge ('HCJ') allowed the respondent's application based on the sole ground that the appellant did not obtain the said leave. Hence, the appellant filed the present appeal. The issues that arose for the court's determination was whether
G s. 232(1) of the Act, when properly construed, required prior leave of court to be obtained before an application to remove the respondent as the liquidator for the company could be made.

Held (allowing appeal with costs; setting aside order of High Court)
Per Idrus Harun JCA delivering the judgment of the court:

H

(1) In the instant action, the removal of the respondent as the company's liquidator and the appointment of the official receiver in his stead is governed by ss. 232(1) and 266 of the Act which did not make leave as a prerequisite to such removal application. In imposing the requirement
I of leave under s. 232(1) of the Act, the HCJ had misconstrued the section. This would be against the clearly expressed intention of Parliament which could be said to tantamount to adding what was not in the Act of Parliament. (paras 19 & 24)

(2) The HCJ had failed to direct her mind to the legislative intent of s. 232(1) of the Act in order to try to get at the real intention of the Legislature and in consequence omitted to consider the section and its relation to the general object intended to be secured by it. Section 232(1) of the Act contains and only contains one relevant requirement so far as it relates to an application for removal of a liquidator in that the power conferred on the court is exercisable by it only on cause shown by the applicant, which necessarily calls for sufficient material or evidence before the court that would establish or suggest that there is cause to have the liquidator removed. Therefore, the legislative intent of s. 232(1) of the Act is to confer specific power to the court to remove the liquidator and impose on it the duty to exercise the said power only on cause shown. (para 25)

(3) Applying the rules of statutory construction so lucidly, it would be patently wrong for the HCJ to interpret s. 232(1) of the Act in the manner she did. The HCJ should have construed what s. 232(1) of the Act says, not what the section ought to have said. The decision would have an effect of imposing an additional burden to protect the liquidator under all circumstances, without any exception and for any misconduct including criminal and illegal acts that the liquidator may have committed. By requiring leave before an action to remove the liquidator can be initiated caused grave injustice to the appellant. The HCJ had clearly misdirected herself in misapprehending the law in allowing the application to strike out the appellant's originating summons. Therefore, this is not a plain and obvious case and it involves an important question of law for determination by the High Court. (paras 28 & 29)

Bahasa Malaysia *Translation Of Headnotes*

STM Transformers Sdn Bhd ('syarikat tersebut') diperintahkan agar digulung dan responden telah dilantik sebagai pelikuidasi. Perayu, melalui saman pemula, telah memohon untuk menyingkirkan responden sebagai pelikuidasi menurut s. 232(1) Akta Syarikat 1965 ('Akta') dan melantik pegawai penerima sebagai pelikuidasi baru. Perayu, dalam afidavit sokongannya, telah mengadu tentang perbuatan jenayah responden. Responden, walau bagaimanapun, melalui notis permohonan menurut A. 18 k. 19(1)(b), (c) dan (d) dan A. 92 k. 4 Kaedah-Kaedah Mahkamah 2012, telah memohon perintah mahkamah supaya membatalkan saman pemula perayu atas alasan, antara lain, kegagalan perayu untuk mendapatkan kebenaran yang diperlukan daripada mahkamah penggulungan untuk memulakan prosiding terhadap responden untuk menyingkirkannya sebagai pelikuidasi bagi syarikat tersebut ('kebenaran tersebut'). Hakim Mahkamah Tinggi ('HMT') membenarkan permohonan responden berdasarkan alasan tunggal bahawa perayu tidak memperoleh kebenaran tersebut. Oleh itu, perayu memfailkan rayuan ini. Isu-isu yang dibangkitkan untuk pertimbangan mahkamah adalah

A sama ada s. 232(1) Akta, apabila ditafsirkan dengan betul, memerlukan kebenaran mahkamah sebelum permohonan untuk menyingkirkan responden sebagai pelikuidasi bagi syarikat tersebut dibuat.

Diputuskan (membenarkan rayuan dengan kos; mengetepikan perintah Mahkamah Tinggi)

B **Oleh Idrus Harun HMR menyampaikan penghakiman mahkamah:**

(1) Dalam tindakan ini, penyingkiran responden sebagai pelikuidasi syarikat dan pelantikan pegawai penerima sebagai pengganti ditadbir oleh ss. 232(1) dan 266 Akta yang tidak menjadikan kebenaran sebagai pra-syarat untuk permohonan penyingkiran. Dengan mengenakan keperluan kebenaran di bawah s. 232(1) Akta, HMT telah tersalah tafsir seksyen tersebut. Ini akan bercanggah dengan niat Parlimen yang dinyatakan dengan jelas yang boleh dikatakan sama seperti menambah apa yang tidak ada dalam Akta Parlimen.

D **(2)** HMT gagal mengarahkan perhatiannya kepada niat perundangan s. 232(1) Akta untuk mendapatkan niat sebenar Perundangan dan akibatnya gagal mempertimbangkan seksyen tersebut dan kaitannya dengan objektif umum yang diniatkan untuk dicapai olehnya. Seksyen 232(1) Akta mengandungi dan hanya mengandungi satu keperluan setakat berkaitan dengan suatu permohonan untuk penyingkiran seorang pelikuidasi di mana kuasa yang diberikan kepada mahkamah boleh dilaksanakan olehnya hanya apabila sebab ditunjukkan oleh pemohon, yang semestinya memerlukan keterangan material yang mencukupi atau keterangan di hadapan mahkamah yang akan membuktikan atau mencadangkan bahawa terdapat sebab untuk menyingkirkan pelikuidasi. Oleh itu, niat perundangan s. 232(1) Akta adalah untuk memberi kuasa yang khusus kepada mahkamah untuk menyingkirkan pelikuidasi dan mengenakan ke atasnya kewajipan untuk menjalankan kuasa tersebut hanya apabila sebab ditunjukkan.

G **(3)** Dengan mengguna pakai kaedah-kaedah pentafsiran undang-undang dengan jelas, adalah salah untuk HMT untuk mentafsirkan s. 232(1) Akta sebagaimana dilakukannya. HMT sepatutnya mentafsirkan apa yang dinyatakan dalam s. 232(1), bukan apa yang sepatutnya dinyatakan oleh seksyen tersebut. Keputusan tersebut akan memberi kesan mengenakan beban tambahan untuk melindungi pelikuidasi di bawah semua keadaan, tanpa sebarang pengecualian dan untuk sebarang salah laku termasuk perbuatan jenayah dan kesalahan undang-undang yang mungkin dilakukan oleh pelikuidasi. Dengan mengkehendaki kebenaran sebelum suatu tindakan menyingkirkan pelikuidasi boleh dimulakan menyebabkan ketidakadilan serius kepada perayu. HMT jelas telah

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tersalah arah dalam memahami undang-undang dengan membenarkan permohonan untuk membatalkan saman pemula perayu. Oleh itu, ini bukanlah kes yang nyata dan jelas dan ia melibatkan satu persoalan undang-undang yang penting untuk ditentukan oleh Mahkamah Tinggi.

Case(s) referred to:
Dixon v. Dixon (1904) 1 Ch 161 ***(refd)***
In re Maidstone Palace of Varieties, Limited [1909] 2 Ch 283 ***(refd)***
Krishnadas Achutan Nair & Ors v. Maniyam Samykano [1997] 1 CLJ 636 FC ***(foll)***
Lim Chiew v. Siteman Construction Sdn Bhd; Khairul Anuar Mamat [2013] 1 LNS 693 HC ***(refd)***
NKM Holdings Sdn Bhd v. Pan Malaysian Wood Bhd [1986] 1 LNS 79 SC ***(refd)***
Sri Bangunan Sdn Bhd v. Majlis Perbandaran Pulau Pinang & Anor [2007] 5 CLJ 673 FC ***(foll)***
Tai Kwong Goldsmiths and Jewellers (In Receivership) v. Yap Kooi Hee & Ors [1994] 4 CLJ 959 SC ***(dist)***
Tribunal Tuntutan Pembeli Rumah v. Westcourt Corporation Sdn Bhd And Other Appeals [2004] 2 CLJ 617 CA ***(refd)***
Vengadasalam v. Khor Soon Weng & Ors [1985] 1 LNS 46 SC ***(refd)***
Wong Kee Chong v. Folin & Brothers Sdn Bhd [2011] 10 CLJ 806 HC ***(refd)***
Woodsville Sdn Bhd v. Tien Ik Enterprises Sdn Bhd & Ors & Another Appeal [2010] 2 CLJ 858 CA ***(refd)***
Yap Cheng Hai v. Yap Cheng Hai Feng Shui Center Of Excellence Sdn Bhd & Ors [2010] 1 LNS 1702 HC ***(refd)***
Zainal Abidin Putih & Anor v. Che Wan Dvpt Sdn Bhd [1992] 3 CLJ 1539; [1992] 1 CLJ (Rep) 381 SC ***(refd)***

Legislation referred to:
Companies Act 1965, ss. 181A, 218(1)(i), 226(3), 232(1), 236(3), 266
Rules of Court 2012, O. 18 r. 19(1)(b), (c), (d), O. 92 r. 4

Other source(s) referred to:
Francis Bennion, *Bennion On Statutory Interpretation*, 5th edn, pp 23, 472

For the appellant - Lim Heng Choo (Roger Chin with him); M/s Lim & Lim Advocs
For the respondent - Shankar Asnani (Daniel Ling with him); M/s Thomas, Shankar Ram & Co Advocs

[Appeal from High Court, Kuching; Originating Summons No: KCH-24-47-6-2014(HC2)]

Reported by Sandra Gabriel

JUDGMENT

Idrus Harun JCA:

[1] One Ong Jin Ek, who was a contributory to STM Transformers Sdn Bhd (the company), petitioned to wind up the company on just and equitable ground pursuant to s. 218(1)(i) of the Companies Act 1965 (the Act), by which petition, on 21 June 2013 the company was compulsorily wound up and the respondent was appointed a liquidator.

[2] On 30 June 2014, the appellant, who was also the company's shareholder and director, sued by originating summons seeking to remove the respondent as the liquidator premised on s. 232(1) of the Companies Act 1965 (the Act) and to appoint the official receiver as a new liquidator. Supporting the application, the appellant in his affidavit in support complained of criminality of the acts of the respondent involving *inter alia*, attempted bribery as well as the respondent's conduct in engaging gangsters allegedly to protect the company's assets and premises, to threaten to lock up the company's factories and to evict him from the premises illegally. The appellant also alleged that the gangsters came to his factory at Pending, banging the main gate and continuously throwing stones into it endangering the lives of his staff and himself forcing his factory operation to stop. With the criminal element thrown in, the appellant reported to the police and the Malaysian Anti-Corruption Commission complaining specifically about these incidents.

[3] The respondent, however, by notice of application pursuant to O. 18 r. 19(1)(b), (c) and (d) and O. 92 r. 4 of the Rules of Court 2012, sought the court's order to strike out the appellant's originating summons grounded *inter alia* on the appellant's failure to obtain the requisite leave from the winding up court to commence proceedings against the respondent for his removal as the liquidator for the company.

[4] The learned judge, on 2 September 2014 allowed the application to strike out the originating summons apparently based on the sole ground that the appellant did not obtain leave from the court which appointed the respondent as the liquidator, before the action could be brought against the respondent to remove him as the liquidator for the company.

[5] The appellant appeals to this court. This appeal in our view, turns upon a pure question of law. At the heart of the matter lies the question whether s. 232(1) of the Act when properly construed, requires prior leave of court to be obtained before an application to remove the respondent as the liquidator for the company can be made pursuant to the said section. The appeal is based on the contention which is confined solely to this question which learned counsel on behalf of the appellant has submitted that the proper construction of s. 232(1) of the Act would show that no leave is required for the appellant's application to remove the liquidator of the company. On the contrary, for the respondent, the argument brought to bear upon the proper construction of s. 232(1) of the Act is that leave of court is required for the appellant to proceed against the liquidator of the company for his ultimate removal without which the appellant has no right to commence this action against the respondent and thus the court was not competent to hear it.

[6] To appreciate the contentions that have been raised before this court, and for convenience, we reproduce below the relevant part of s. 232(1) of the Act:

> 232 General provisions as to liquidators
>
> (1) A liquidator appointed by the Court may resign or on cause shown be removed by the Court.

It would seem to us that the decision of the court below that leave was required from the court which appointed the respondent before an application under s. 232(1) can be proceeded with was made "in the face of such binding statement on the law from the highest court in the land." That binding statement we gather, emanated from the Supreme Court's decision in *Tai Kwong Goldsmiths and Jewellers (In Receivership) v. Yap Kooi Hee & Ors* [1994] 4 CLJ 959; [1995] 1 MLJ 1 that whether or not misconduct of the receiver was in issue, leave of the court must be obtained before an action was brought against the liquidator.

[7] Our cursory reading of s. 232(1) of the Act would clearly show on the face of it that the provisions thereof whether expressly or by implication do not have or impose a requirement, much less a mandatory one, for leave as a prerequisite before any application to remove a liquidator can be commenced thereunder. Likewise, s. 266 of the Act which deals specifically with the court's discretion to remove a liquidator on cause shown and appoint another liquidator does not have express provisions imposing a similar requirement. We would say in this regard, that since both sections which deal with a common subject matter do not provide for the requirement for leave, the most compelling reason which can be discerned from the absence of such provisions is that the expressed legislative intent of the law would plainly and logically show that no such requirement is necessary and accordingly leave is not a condition precedent for the execution of the purpose for which both sections seek to accomplish.

[8] In construing an Act of Parliament, the starting point must always be to bear in mind the court's duty, as an interpreter of legislation, which is to construe the statute and arrive at the legal meaning primarily intended by the Legislature. The court is never entitled, on the principle *non liquet* (translated as "it is not clear'), to decline the duty of determining the legal meaning of a statute or any of its relevant provisions (*Bennion On Statutory Interpretation*, Francis Bennion, 5th edn at p. 23). On the other hand, we keep in mind that it is a cardinal principle of statutory construction that we must give effect to the legal meaning of the statute construing it just as it reads where the law is plain, straightforward and unambiguous. It would moreover be a salutary reminder to state that in construing a statute, the duty of the court shall be to interpret it according to, and in order to ascertain the true intent of the Legislature, what such legislation seeks to accomplish.

[9] Turning now to the present appeal, it would thus be the duty of this court to ascertain the intention of Parliament in enacting s. 232(1) of the Act and give effect to it according to the true intent of the maker thereof by interpreting the said provisions and in so doing we are guided by, and apply the accepted rules and principles laid down by law relating to the construction of statutes. Our duty would be to expound the language of the section in accordance with the settled rules of construction (*NKM Holdings Sdn Bhd v. Pan Malaysia Wood Bhd* [1986] 1 LNS 79; [1987] 1 MLJ 39].

[10] In *Krishnadas Achutan Nair & Ors v. Maniyam Samykano* [1997] 1 CLJ 636; [1996] 2 MLRA 194, Gopal Sri Ram JCA delivering the judgment of the Federal Court said:

> The function of a Court when construing an Act of Parliament is to interpret the statute in order to ascertain legislative intent primarily by reference to the words appearing in the particular enactment. *Prima facie*, every word appearing in an Act must bear some meaning. For Parliament does not legislate in vain by the use of meaningless words and phrases. A judicial interpreter is therefore not entitled to disregard words used in a statute or subsidiary legislation or to treat them as superfluous or insignificant. It must be borne in mind that:
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> > As a general rule a Court will adopt that construction of a statute which will give some effect to all of the words which it contains. Per Gibbs J in *Beckwith v. R.* [1976] 12 ALR 333, at p. 337.
>
> See also, *Commonwealth v. Baume* [1905] 2 CLR 405, at p. 414. Per Griffith CJ.
>
> Where it is impossible to give a full and accurate meaning to every word appearing in a section of a statute, the duty of the Court is to give the words an interpretation, "that produces the greatest harmony and the least inconsistency": *Australian Alliance Assurance Co. Ltd. v. Attorney-General (Queensland)* [1916] St R Qd. 135 at p. 161, per Cooper CJ.

[11] We bear in mind that in construing an Act of Parliament, in all cases the object is to see what is the intention expressed by the words used, and when interpreting it we must be careful not to misinterpret Parliament's intention (*Bennion On Statutory Interpretation*, Francis Bennion, 5th edn, p. 472). The Federal Court in *Sri Bangunan Sdn Bhd v. Majlis Perbandaran Pulau Pinang & Anor* [2007] 5 CLJ 673; [2007] 2 MLRA 187 held:

> In construing a statute the duty of the court is limited to interpreting the words used by the legislature and to give effect to the words used by it. The court is not entitled to read words into a statute unless clear reason for it is to be found in the statute itself.

[12] In *Vengadasalam v. Khor Soon Weng & Ors* [1985] 1 LNS 46; [1985] 2 MLJ 449 Abdoolcader SCJ said:

> We would in this regard also advert to the decision of the House of Lords in *Thompson v. Goold & Co*. where Lord Mersey said in his speech (at page 420): "It is a strong thing to read into an Act of Parliament words which

are not there, and in the absence of clear necessity it is a wrong thing to do." Even more pertinent perhaps would be the speech of Lord Loreburn, L.C., in *Vickers, Sons and Maxim, Limited v. Evans* when he said (at page 445):

> My Lords, this appeal may serve to remind us of a truth sometimes forgotten, that this House sitting judicially does not sit for the purpose of hearing appeals against Acts of Parliament, or of providing by judicial construction what ought to be in an Act, but simply of construing what the Act says. We are considering here not what the Act ought to have said, but what it does say; ...
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> The appellant's contention involves reading words into this clause. The clause does not contain them; and we are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself.

[13] The learned judge in allowing the application of the respondent relied on the Federal Court's decision in *Tai Kwong Goldsmiths and Jewellers (In receivership) v. Yap Kooi Hee & Ors*, *supra*, wherein the issue of leave was raised when three depositors of the appellant, which was a partnership, obtained garnishee orders against the moneys in the hands of the receiver who was appointed by the court when the appellant was dissolved. Obviously this case was not concerned with the issue of a removal of liquidator. A preliminary point taken was that leave of the court that appointed the receiver had to be obtained before any proceedings could be taken against the receiver. As no such leave had been obtained by the garnishors, it was contended that the garnishee orders were bad. The High Court held that leave was not necessary to take out proceedings against the receiver, as it was only in respect of proceedings against the receiver where misconduct was alleged that leave of the court had to be obtained before proceedings were commenced.

[14] The Supreme Court, however, allowed the appeal and held that a court-appointed receiver was an officer of the court and any interference with him or with property under his control constituted a contempt of court. Therefore nobody could bring any action or proceedings against a receiver in his capacity as such, including execution proceedings which included garnishee proceedings, whether or not misconduct of the receiver was in issue, without leave of the court. What has emerged from the decision of the Supreme Court in the above mentioned case is that quite clearly where an action against a receiver has been commenced in another court, leave of the court which appointed the receiver must first be obtained and misconduct of a receiver or liquidator is not the only ground upon which leave is required.

[15] The law has been shaped and amplified further by the Court of Appeal in the case of *Woodsville Sdn Bhd v. Tien Ik Enterprises Sdn Bhd & Ors & Another Appeal* [2010] 2 CLJ 858 when it had raised the *ante* by holding that where the applicant was not armed with leave when he filed an *ex parte* application

for leave for issue of committal proceedings against the liquidator, whether the purported action against the liquidator was in another court or the winding up court was irrelevant. Leave was necessary as the liquidator was still an officer of the court.

[16] The respondent has also relied on *In re Maidstone Palace of Varieties, Limited* [1909] 2 Ch 283 and *Zainal Abidin Putih & Anor v. Che Wan Dvpt Sdn Bhd* [1992] 3 CLJ 1539; [1992] 1 CLJ (Rep) 381. These cases yet again, did not have a specific connection with the issue of the removal of a liquidator. In the former, a receiver was appointed by the court in a debenture-holders' action. By virtue of the appointment, the receiver had the management of the theatre known as the Maidstone Palace of Varieties. In the course of that management he made use of certain plant which was claimed by the respondent as their property. The respondent claimed that the receiver had no right to use it except if the receiver paid them a rent. They threatened proceedings in the King's Bench Division, instead of bringing the claim in the debenture-holders action. Neville J in his judgment held:

> It appears to me that a dispute of that kind is one which, as shown by *Aston v. Heron* (2 My & K 890), the Court will deal with itself, and that it will not allow its officer to be subject to an action in another Court with reference to his conduct in the discharge of the duties of his office, whether right or wrong. The proper remedy for any one aggrieved by his conduct is to apply to this Court in the action in which he was appointed. If any wrong has been done by the officer, the Court will no doubt see that justice is done, but no one has a right to sue such an officer in another Court, without the sanction of this Court.

[17] In *Zainal Abidin Putih & Anor v. Che Wan Dvpt Sdn Bhd*, *supra*, the action had been commenced by the respondent against the receivers seeking an order that the receivers were liable to pay the costs taxed by the Senior Assistant Registrar. The Supreme Court held that leave of the court should have been obtained to proceed against them.

[18] We can deduce from these decisions that leave was held to be necessary as the receivers were appointed by the court's authority and as such they were its officers who could not be interfered with without observing a proper formality of obtaining leave. The Supreme Court in *Tai Kwong Goldsmiths & Jewellers (In receivership) v. Yap Kooi Hee & Ors*, *supra*, in holding that leave was necessary to proceed against the receiver where conduct was not in issue, explained that the principle stemmed from a general principle of wide application, that interference with persons having duties to perform in a court of justice amounted to contempt of court and the court's duty was to prevent *brevi manu* and by summary proceedings any attempt to interfere with the administration of justice. The principle was that those who had duties to discharge in a court of justice were protected by the law, and shielded on their way to the discharge of such duties, while discharging them,

and on their return therefrom, in order that such persons might safely have resort to courts of justice. In *Dixon v. Dixon* (1904) 1 Ch 161, referred to by the Supreme Court, Eady J took the view in respect of interference with the receiver and manager as something calling for the invocation of the broad principle of protection of an officer of the court. The object of the court was to prevent any undue interference with the administration of justice, and when any one interfered with an officer of the court it was essential for the court to protect that officer.

[19] Thus the facts of these cases in our opinion, are clear enough to be discerned or recognised as distinguishable from the present appeal. We discern the commonalities between these cases in that the action in each case of which leave was held to be required before it could be proceeded with, was against the receiver personally for certain acts or in connection with the performance of their duties as such, it did not involve any specific provision in an Act of Parliament as analogous to that of s. 232(1) of the Act. In the instant action however, the removal of the respondent as the company's liquidator and the appointment of the official receiver in his stead is governed by ss. 232(1) and 266 of the Act which do not make leave as a prerequisite to such removal application. The instant case therefore can be distinguished from the three authorities in question which, and we mean no disrespect to the binding pronouncements of the superior court therein, clearly are not supportive of and do not have any bearing to, the proposition urged for the respondent. Obviously, and with respect, the learned judge misconstrued the Supreme Court's decision in the instant appeal when Her Ladyship decided that the alleged criminality of the acts of the liquidator would not excuse the absence of the leave from the winding up court to commence the action against the respondent and that the originating summons filed without such leave was not maintainable.

[20] It is appropriate that we point out that there is admittedly a dearth of authorities which deal specifically with the issue of leave under s. 232(1) of the Act. We were however referred to two High Court's decisions by learned counsel for the appellant on this issue which in our view would be of great assistance to us in properly construing s. 232(1) of the Act in order to ascertain its correct and true legislative intent. The first case is *Wong Kee Chong v. Folin & Brothers Sdn Bhd* [2011] 10 CLJ 806; [2010] MLJU 11 1198 wherein the applicants filed an application for the removal of the respondents as several and joint liquidators of Folin & Brothers Sdn Bhd pursuant to s. 232(1) of the Act. It was submitted for the respondents that leave of court was necessary before the liquidators could be removed and as there was no such leave obtained from the court, the application must be dismissed *in limine*.

[21] The learned judge of the High Court, in holding that leave was not necessary said:

> The provision of section 232(1) of the Companies Act 1965 pursuant to which this application was made is crystal clear that no leave is required. That section reads: 'A liquidator appointed by the Court may resign or on cause shown be removed by the Court.' The authorities cited by the 1st Respondent are not supportive of the proposition suggested by the 1st Respondent. They are cases where actions are proposed against the liquidator in respect of the performance of his official duties. In *Abric Project Management Sdn. Bhd (supra)* for instance, serious allegations were directed against the liquidator personally in respect of a sale of land belonging to the company and the Applicant in that case was a contributor and former director of the company who sought to challenge and set aside the sale. It was not a case for the removal of the liquidator.
>
> The reason for the requirement of leave for action against a liquidator is that a liquidator is an officer of the court. He is answerable for his action not only to the shareholders, contributories and creditors of the company of which he was appointed to be the liquidator; he is also answerable to the Court for his action as liquidator. Thus the Court will not permit its officer to be sued without investigation of merits of the case. Therefore learned counsel of the Applicants is correct to submit that cases for removal of liquidators where no leave is required must be distinguished from cases where action is proposed against a liquidator for some alleged wrongdoings in the performance of his official duty as a liquidator: *Zainal Abidin Putih & Anor v. Che Wan Development Sdn Bhd* [1992] 2 MLJ 233, *Chi Liung Holding Sdn Bhd. v. Ng Pyak Yeow* [1995] 4 CLJ 11.

[22] The above decision was followed by the High Court in *Lim Chiew v. Siteman Construction Sdn Bhd; Khairul Anuar Mamat* [2013] 1 LNS 693; [2013] MLRHU 1 which also involved an application for the removal of a liquidator. Leave was not obtained by the petitioner before he commenced the proceedings. It was held:

> On the second preliminary objection, the petitioner submits that pursuant to section 226(3) of Act 125, the applicant has failed to obtain leave from court before initiating this action. As such, the application is defective and should be struck out. Section 226(3) reads:
>
> > When a winding up order has been made or a provisional liquidator has been appointed no action or proceeding shall be proceeded with or commenced against the company except:
> >
> > (a) by leave of court; and
> >
> > (b) in accordance with such terms as the Court imposes.
>
> However, this application is premised on a specific provision, section 232(1) of Act 125 and there is nothing in section 232 that mandates leave of court is a condition precedent. As such, it is not proper for this court to read the terms in section 226(3) into section 232(1). It is

trite law that the usage of different terms connotes different intention by the legislature. In *Lee Lee Cheng (f) v. Seow Peng Kwang* [1960] 1 MLJ 1, CA, Thomson CJ said this:

> It is axiomatic that when different words are used in a statute they refer to different things.

[23] We would additionally consider, lest it be said we overlook it, an unreported decision of the High Court on the issue of leave under s. 232(1) which differs from the interpretation given to the said section in the above two cases, referred to us by learned counsel for the respondent namely *Yap Cheng Hai v. Yap Cheng Hai Feng Shui Center Of Excellence Sdn Bhd & Ors* [2010] 1 LNS 1702, Guaman No: D3-28-821-2004. At the behest of the petitioner, an application under s. 232(1) of the Act was filed for the removal of the liquidator, accompanied by an application for leave. It should be noted that despite the leave application, learned counsel for the petitioner and the liquidator himself were of the view that leave was not required as the substantive application for removal of the liquidator was made pursuant to s. 232(1) of the Act which did not have a stipulation for such requirement therein. The petitioner nevertheless filed the application for leave out of an abundance of caution. It would seem clear that the learned judge was of the view that leave of the court ought to be sought because firstly, it maintained an overall supervisory role in the liquidation of any company, secondly, s. 232(1), when read together with ss. 236(3) and 266 of the Act, a liquidator's exercise of powers was always subject to the control of the court and thirdly as the test on the grant of leave was whether the application was not vexatious or merely oppressive, towards that end, the court would ensure that no wasteful litigation was brought against the liquidator.

[24] In our judgment, the decisions in *Wong Kee Chong v. Folin & Brothers Sdn Bhd supra* and *Lim Chiew v. Siteman Construction Sdn Bhd*; *Khairul Anuar Mamat*, *supra*, which we are entirely in agreement, are consistent with the true legislative intent, and plain language of s. 232(1) of the Act which we have adverted to earlier. With much deference to the learned judge, in imposing the requirement of leave under s. 232(1) of the Act in the instant appeal, the learned judge had in effect misconstrued the section by wrongly reading words and a requisite into the section which were not there and therefore such interpretation, in our judgment would be against the clearly expressed intention of Parliament which could be said to tantamount to adding what was not in the Act of Parliament (*Tribunal Tuntutan Pembeli Rumah v. Westcourt Corporation Sdn Bhd & Other Appeals* [2004] 2 CLJ 617; [2004] 3 MLJ 17).

[25] The learned judge in fact, had completely failed to direct her mind to the legislative intent of s. 232(1) of the Act in order to try to get at the real intention of the Legislature and in consequence she omitted to consider the section and its relation to the general object intended to be secured by it. In

our judgment, s. 232(1) contains and only contains one relevant requirement so far as it relates to an application for removal of a liquidator in that the power conferred on the court is exercisable by it in that behalf only on cause shown by the applicant, which necessarily calls for sufficient material or evidence before the court that would establish or suggest that there is cause to have the liquidator removed. It must be borne in mind that the removal of liquidator is expressly stated by law to be by the court which follows therefore that the legislative intent of s. 232(1) is to confer specific power to the court to remove the liquidator and impose on it the duty to exercise the said power only on cause shown.

[26] If indeed, the purpose for which leave is required is for the reasons set out in *Tai Kwong Goldsmith & Jewellers (under receivership) v. Yap Kooi Hee & Ors*, *supra* and *Yap Cheng Hai V. Yap Cheng Hai Feng Shui Center Of Excellence Sdn Bhd & Ors*, *supra*, we should say that the requirement under s. 232(1) of the Act, if fulfilled, can produce the desired results as it would mean that there should be, as we have stated above, sufficient material or evidence before the court that would constitute cause for his removal before the court can exercise the power to remove a liquidator. With this requirement ingrained in s. 232(1) of the Act, there is without a doubt, sufficient safeguard designed to protect the liquidator as the officer of the court, to prevent any undue interference with the administration of justice and in any event to preclude from being made, or sieve out what is in essence, any application which is vexatious or otherwise oppressive before the court as well as to maintain the overall court's supervisory role in the liquidation of a company. It is therefore the manifest intention of the Legislature that leave is not required for the application under this section.

[27] Section 232(1) ought to be compared with s. 226(3) which expressly requires leave of court before an action or proceeding can be proceeded with or commenced against a company when a winding up order has been made or a provisional liquidator has been appointed and s. 181A which imposes a similar requirement before a complainant may intervene in or defend an action on behalf of the company. Parliament would, in our view, have expressly provided in s. 232(1) for leave to be obtained before an application to remove a liquidator can be commenced if that is the legislative intent as it does in ss. 226(3) and 181A of the Act. In other words, without such express, unequivocal and unambiguous language in the section, it would be fallacious to say that such requirement is a necessity under s. 232(1) of the Act for that was indeed a strong thing to read words into the section when it clearly does not contain them. Just as every word in an Act of Parliament must bear some meaning, the absence of any such word therein must also be for some reason or purpose intended by Parliament, and in the instant case, where s. 232(1) does not contain express provisions regarding leave, the clear intention of the Legislature must be that such leave is not required before the

court can be moved to remove a liquidator. We would accordingly and with respect, disagree with the learned judge that leave is necessary for the purpose of an application under s. 232(1) of the Act.

[28] Accordingly, applying the rules of statutory construction so lucidly explained in both Federal Court cases of *Krishnadas Achutan Nair & Ors v. Maniyam Samykano, supra and Sri Bangunan Sdn Bhd v. Majlis Perbadanan Pulau Pinang & Anor, supra*, it would be patently wrong for the learned judge to interpret s. 232(1) of the Act in the manner she did. Her Ladyship should have construed what s. 232(1) of the Act says, not what the section ought to have said. The decision, in our judgment, would have an effect of imposing an additional burden to protect the liquidator under all circumstances, without any exception and for any misconduct including criminal and illegal acts that the liquidator may have committed, by requiring leave before an action to remove the liquidator can be initiated thereby causing grave injustice to the appellant. The learned judge had clearly misdirected herself in misapprehending the law in allowing the application to strike out the appellant's originating summons.

[29] We are thus driven to the inevitable conclusion that this is not a plain and obvious case that we could safely say would justify the learned judge's decision to grant the order sought to the effect we have indicated earlier. The case obviously involves an important question of law for determination by the High Court. Based on the foregoing reasons and circumstances, we set aside the order of the learned judge and allow the appeal with cost of RM10,000. The deposit shall be refunded to the appellant.